

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

DANIEL GENE MOSLEY,)
)
Petitioner,)
)
vs.) Case Number CIV-18-668-C
)
JIMMY MARTIN,)
)
Respondent.)

ORDER ADOPTING REPORT AND RECOMMENDATION

Petitioner filed the present action pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his state court convictions. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Bernard M. Jones. Judge Jones entered a Report and Recommendation (“R&R”) on December 19, 2018, recommending the Petition be dismissed. Petitioner has timely objected.

The substantive facts and law are accurately set out in Judge Jones’ R&R and there is no purpose to be served in repeating them yet again. As Judge Jones noted, Petitioner’s claims are clearly time barred and he had failed to offer sufficient evidence to obtain relief through equitable tolling. In his Objection, Petitioner offers additional argument in support of his quest for application of the equitable tolling doctrine. However, that evidence fails to demonstrate that his counsel was extraordinarily negligent as required by Holland v. Florida, 560 U.S. 631, 652 (2010). Thus, Petitioner has failed to demonstrate he is entitled to equitable tolling.

Accordingly, the Court ADOPTS, in full, the Report and Recommendation of the Magistrate Judge (Dkt. No. 17). Petitioner's claim is clearly time barred, and it will be DISMISSED with prejudice. A judgment will enter accordingly.

IT IS SO ORDERED this 14th day of February, 2019.



ROBIN J. CAUTHRON
United States District Judge